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**FILED**  
07/12/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0046-R-2020  
Lambert, Kathryn  
41.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

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CLAIMANTS: Schnitzler Corp.; John C. Sullivan

**CASE 43B-0046-R-2020**

43B 103540-00

43B 103541-00

43B 194905-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Schnitzler Corp. domestic claim 43B 103540-00, Schnitzler Corp. stockwater claim 43B 103541-00, and John C. Sullivan stockwater claim 43B 194905-00 each appeared in the Preliminary Decree with the following decree exceeded issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 80 MINER'S INCHES DECREED IN CASE NO. 4749, PARK COUNTY. 103541-00, 103540-00, 194905-00, 194834-00, 194843.

The decreed right is the R. B. Forney May 1, 1880 80.00 miner's inch right decreed in Cause No. 4749, *George A. Allen v. Tony Petrick et al.* When this Case was originally consolidated, Jennifer L. Hintz, Michael E. Hintz, and John F. Tomlin stockwater claim 43B 194834-00 and irrigation claim 194843-00 were also included. On November 20, 2020 the parties filed a Stipulation. The February 8, 2021 Order Setting Scheduling Conference includes various questions the Court had concerning the Stipulation. On May 2, 2022 the parties filed an Amended Stipulation which supersedes the prior Stipulation. The Amended Stipulation states that only Jennifer L. Hintz, Michael E. Hintz, and John F. Tomlin claims 43B 194834-00 and 43B 194843-00 are properly based on the May 1, 1880 R. B. Forney decreed right. Those two claim were then removed from this Case and consolidated as Case 43B-0836-R-2022 for the completion of the proceedings for those two claims. The Amended Stipulation stated that the research indicated these three remaining claims must be based on some other right(s) with priority dates after May 1, 1880, but such right(s) were not known at the time the Amended Stipulation was filed.

On July 19, 2022 the Sullivan/Schnitzler Position Statement, And Request To Modify Claims was filed identifying the rights the claims should be based upon and the various changes to be made. On October 27, 2022 the claimants filed Proposed Abstracts. The January 5, 2023 Order Setting Filing Deadline includes various questions the Court had concerning the Position Statement and Proposed Abstracts, and set a deadline for the claimants to file additional evidence, information, and rationales for the requested changes. On February 15, 2023 Sullivan/Schnitzler Position Statement, and Request To Modify Claims was filed. The April 6, 2023 Order Granting In Part And Denying In Part Motion To Modify and Order Setting Deadline To Show Cause Why Claim 43B 194905-00 Should Not Be Dismissed states that the information in the February 15, 2023 filing is sufficient for claims 43B 103540-00 and 43B 103541-00 but states the requested changes for claim 43B 194905-00 appear to make it duplicate a different Sullivan claim, 43B 194910-00. On April 25, 2023 Claimants' Response To Order was filed requesting dismissal of claim 43B 194905-00 as it duplicates claim 43B 194910-00. All of the changes

recommended below are based on these last two filings. The settlement documents are viewable in the Court's FullCourt Enterprise case management system.

The April 25, 2023 Response then requests changes to claims which are not in this Case. To pursue ownership changes, ownership updates should be filed with the Montana Department of Natural Resources and Conservation. Any other changes to the claims might be pursued by filing motions to amend pursuant to section 85-2-233(6), MCA. However, such motions might not be granted by the Chief or Associate Water Judge as such changes could have been pursued by filing objections to the claims during the Preliminary Decree objection filing period.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. For all of these claims, the decree exceeded issue remark should be removed as these claims are no longer for a portion of the R. B. Forney May 1, 1880 80.00 miner's inch right decreed in Cause No. 4749, *George A. Allen v. Tony Petrick et al.*

2. For domestic claim 43B 103540, the Preliminary Decree states that the priority date is MAY 1, 1880 and the type of historical right is DECREED. The priority date should be SEPTEMBER 23, 1949 and the type of historical right should be USE.

The Preliminary Decree states that the place of use is:

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
2.00		NWSWNW	34	4S	9E	PARK
	7	NENE	33	4S	9E	PARK
2.00						

The place of use should be:

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
<u>2.00</u>		SESWNW	34	4S	9E	PARK
2.00						

The Preliminary Decree also includes the following notice remarks:

THE MOTION OF THE COURT HAS BEEN AMENDED TO CONFORM WITH THE EVIDENCE SUBMITTED BY THE CLAIMANT TO INCLUDE CHANGES IN THE POINT OF DIVERSION AND PLACE OF USE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

AT THE TIME OF THE CLAIMED PRIORITY DATE, IT APPEARS THAT THE PLACE OF USE WAS PART OF AN INDIAN RESERVATION.

As no objections were filed to pursue these possible issues, the remarks should be removed as having served their notice purposes.

3. For stock claim 43B 103541-00, the Preliminary Decree states that the priority date is MAY 1, 1880 and the type of historical right is DECREED. The priority date should be JULY 14, 1922 and the type of historical right should be USE.

The Preliminary Decree states that the ditch name is PETRICK-OMMENDSON DITCH. The ditch name should be PETRICK-QUESENBERRY-OMMENDSON DITCH. These two ditches are adjacent to each other within the same legal description, so the legal description for the point of diversion does not require change.

The Preliminary Decree also includes the following notice remarks:

THE MOTION OF THE COURT HAS BEEN AMENDED TO CONFORM WITH THE EVIDENCE SUBMITTED BY THE CLAIMANT TO INCLUDE CHANGES IN THE POINT OF DIVERSION. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

As no objections were filed to pursue these possible issues, the remarks should be removed as having served their notice purposes.

4. For stock claim 43B 194905-00, the claim should be dismissed as requested by the claimant.

#### CONCLUSION OF LAW

The information provided by the claimants is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 103540-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SCHNITZLER CORP  
% LIVINGSTON ENTERPRISE  
PO BOX 1283  
LIVINGSTON, MT 59047

**Priority Date:** SEPTEMBER 23, 1949

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 27.00 GPM

**Volume:** 5.00 AC-FT

**Households:** 3

**Maximum Acres:** 2.00

**\*Source Name:** STRAWBERRY CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNW	34	4S	9E	PARK

**Period of Diversion:** APRIL 1 TO OCTOBER 1

**Diversion Means:** PIPELINE

**Period of Use:** APRIL 1 TO OCTOBER 1

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		SESWNW	34	4S	9E	PARK

**Total:** 2.00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 103541-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SCHNITZLER CORP  
% LIVINGSTON ENTERPRISE  
PO BOX 1283  
LIVINGSTON, MT 59047

**Priority Date:** JULY 14, 1922

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**\*Source Name:** STRAWBERRY CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNW	34	4S	9E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DITCH

**Ditch Name:** PETRICK-QUESENBERRY-OMMENDSON DITCH

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2NW	34	4S	9E	PARK
2		7	NENE	33	4S	9E	PARK

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:**      **43B 194905-00**    STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:**      **DISMISSED**

**Owners:**                      JOHN C SULLIVAN  
                                     PO BOX 1283  
                                     LIVINGSTON, MT 59047

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):**                      STOCK

**Flow Rate:**

**Volume:**

**Source Name:**                      STRAWBERRY CREEK

**Source Type:**                      SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.